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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUN 17 1997

Federal Communications Commission
Office of Secretary

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	DA 97-916

REPLY OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and the Public Notice released May 2, 1997, AT&T Corp. ("AT&T") hereby submits this reply to the comments of other parties on the North American Numbering Council's ("NANC") recommendations concerning local number portability ("LNP") administration.[1]

The commenters strongly support the NANC's LNP recommendations, with a few parties seeking minor modifications of those findings.[2] In this reply, AT&T addresses

1 North American Numbering Council, Local Number Portability Administration Selection Working Group, issued April 25, 1997. A list of parties submitting comments and the abbreviations used to identify them are set forth in an appendix to these reply comments.

2 ALTS, AT&T, GSA and WorldCom support NANC's recommendations in full. CTIA also supports NANC's finding, but requests greater consideration of the concerns of wireless carriers. Cincinnati Bell argues only that its entire territory should be included in a single regional LNP database, while USTA seeks to make disputes over the alleged competitive neutrality of the actions of an LNP vendor or LLC directly appealable to the Commission. See USTA, pp. 3-4. As discussed below, BAN contends that the LLCs are not competitively neutral.

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a single issue: the allegations by Bell Atlantic and NYNEX (collectively, "BAN") that because the limited liability corporations ("LLCs") which oversee the operations of the LNP vendors operate by majority vote rather than consensus, the LNP vendors are not competitively neutral.[3] This argument plainly is without merit and should be rejected.

As a preliminary matter, no other carrier supports BAN's argument.[4] More fundamentally, despite BAN's assertions that the LLCs are "currently controlled by" CLECs, Bell Atlantic is the only major ILEC that has refused to join a regional LLC.[5] NYNEX is a member of the northeast region LLC and has actively participated in that body's work. Indeed, other than the instant petition, AT&T is not aware of any complaints by NYNEX that the LNP administration regime is not competitively neutral.

Bell Atlantic participated in its region's plans for LNP administration, which included the creation and governance of the Mid-Atlantic Carrier Acquisition Company ("MCAC"), the regional LLC.[6] Bell Atlantic did not complain that the LLC structure compromised LNP administrators' neutrality until "days before the expected completion of

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3 In all other respects, BAN urges the Commission to adopt the NANC's LNP administration recommendations "without modification." BAN, p. 1.

4 USTA states that "it is doubtful that the [LLCs'] one-vote-per-member procedure will consistently guarantee equitable outcomes," but it does not join BAN's demand that the LLCs must operate by consensus. USTA, p. 3

5 See Letter from Anne F. LaLena, et al., on behalf of Local Number Portability Consortium, to Daniel P. Gahagan, Executive Secretary, Public Service Commission of Maryland, May 7, 1997 at 2 (attached as Exhibit 1).

6 See Letter from Carville A. Collins, Counsel, Mid-Atlantic Carrier Acquisition Company, to Daniel P. Gahagan, Executive Secretary, Public Service Commission of Maryland, May 27, 1997 at 2 (attached as Exhibit 2).

Master Contract negotiations" between MCAC and its regional LNP database vendor.[7] BAN offers no facts supporting Bell Atlantic's eleventh-hour change of heart; indeed, it admits that it has no evidence that the LLCs have shown any partiality or that their work should be set aside for any reason.[8]

Further, BAN's suggestion that CLECs "control" the LLCs because those bodies make many of their decisions by majority vote, rather than requiring consensus, is likewise contradicted by its comments regarding the NANC. In particular, BAN lauds the NANC's work as "exemplary" -- although that group also does not require consensus for key decisions. For example, the NANC recently submitted its recommendations to the Commission for selection of the North American Numbering Plan ("NANP") Administrator, or "NANPA," a critical decision that the NANC made on a 13-to-11 vote by its members.[9] In light of BAN's approval of NANC's procedures, its participation in the design of MCAC and its last-minute attacks on the LLCs in the absence of any evidence that they have not acted in a competitively neutral fashion, it is difficult to view BAN's arguments as anything more than an attempt either to delay LNP implementation, or to arrogate to itself an effective "veto power" over MCAC proceedings.

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7 Id.

8 See BAN, p. 1 n.2. BAN also admits that NYNEX has not experienced the purported "problems" with its regional LLC that Bell Atlantic claims to have had with MCAC. Id., p. 4 n.9.

9 See Recommendation of the North American Numbering Council: North American Numbering Plan Administrator and Billing and Collection Agent, issued May 15, 1997.

BAN's comments also ignore the fact that the LNP Administration Selection Working Group report sets out extensive requirements intended to ensure the LLCs' neutrality. For example, membership in the LLCs is open to any LEC or CMRS provider that is porting or intends to port numbers.[10] Each member possesses a single vote, with unanimity or supermajorities required for major decisions.[11] In addition, both the LLCs themselves and the LNP database vendors they oversee are expressly required to comply with any and all federal and state laws and regulations, and each LLC has established "a dispute resolution process that provides in part for the resolution of disputes by the directive of an appropriate regulatory authority."[12] These and other restrictions were carefully designed to ensure that the LLCs would be neutral decision makers.

Finally, all of BAN's proposed alternatives are unreasonable, unnecessary or both. First, BAN argues that the Commission should adopt "rules to govern the operation of the LNPAs."[13] However, BAN does not propose any such rules, and offers no information as to what it believes such regulations should require. Even if BAN had made a concrete proposal, the Commission almost certainly could not obtain public comments and promulgate regulations in time to permit implementation of local number portability within

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10 NANC LNPA Selection Working Group Report, supra note 1, at ¶ 4.4.3.

11 See id. § 4.4.2. In recognition of rapidly changing corporate structures in the telecommunications industry, the LLCs also have established affiliation thresholds in an effort to maintain the one-company-one-vote rule. Id.

12 Id. § 4.4.4 through 4.4.6.

13 BAN, p. 6.

the Commission's deadlines. In all events, such regulations are unnecessary, as the LNP administrators are bound by their contracts with the LLCs to operate in compliance with state and federal law, and according to process flows and administrative guidelines that BAN helped to develop.[14]

As an alternative, BAN proposes to require the LLCs to operate under the consensus rules that apply to the American National Standards Institute ("ANSI"). BAN's comments offer no rationale for this proposal, and none is readily apparent. ANSI is not a telecommunications industry body, and its procedures (which BAN does not describe) have not been the model for other FCC advisory committees. Further, as AT&T showed above, the NANC's procedures do not require consensus, and BAN appears to approve wholeheartedly of that organization's operations. Given that BAN admits that it has no evidence that MCAC has failed to act impartially to date, its advocacy of ANSI-type procedures appears to be nothing more than an expedient designed to give it unilateral control of its regional LLC.

BAN's third proposal is to require the LNP administrators to offer their services under tariff. As BAN is well aware, the LLC structure was created in large part so that a neutral party -- the LLCs -- could negotiate terms and conditions with the LNP

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[14] Ironically, the one reason BAN gives for the adoption of regulations to govern the LNP vendors is the fact that the NANC recommended such an approach for the NANPA. See BAN, p. 6. Of course, NANC's proposed regulations, like the Master Contracts governing the LNP vendors, were adopted by a simple majority vote.

vendors that would be applicable to <u>all</u> carriers.[15] Thus, the LLC structure ensures the benefits of a tariffing regime without the attendant regulatory burdens, and there is therefore no need for the Commission to adopt BAN's third proposal.

Moreover, BAN's insistence that the LNP administrators' services be tariffed is strikingly hypocritical, as Bell Atlantic vigorously has sought the power to negotiate its own contracts with LNP vendors. In fact, BAN's allegations that MCAC has "interfered"[16] with Bell Atlantic's efforts to work with its regional LNP vendor grow out of that BOC's efforts to obtain its own LNP administration agreement, while MCAC insisted that it must be permitted to negotiate a Master Contract that would set terms and conditions for all carriers.[17] MCAC did refuse Bell Atlantic's request to "participate" in its negotiations with the Mid-Atlantic LNP vendor -- because Bell Atlantic turned down repeated requests that it join that LLC, as it was free to do at any time.[18]

In fact, two weeks before BAN filed its comments in the instant proceeding, Bell Atlantic argued in a letter to the Maryland PSC that "Section 251(e)(2) clearly does

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15 The NANC LNP Administration Working Group determined that the NANC's status under the Federal Advisory Committee Act prohibited that group from contracting with LNP vendors. The LLCs were established so that an industry group could be formed to negotiate Master Contracts for LNP administration.

16 BAN, p. 4.

17 <u>See generally</u> Exhibits 1 and 2.

18 A carrier is not required to join an LLC in order to obtain LNP administration services under the terms of the Master Contract. <u>See</u> NANC LNPA Selection Working Group Report, <u>supra</u> note 1, at ¶ 4.4.9. In addition, LLC meetings generally are open to the public, with the exception of those portions deemed proprietary by members or vendors. <u>See</u> <u>id</u>., ¶ 4.4.7.

not require that all participants in the number portability plan subscribe to the same identical contractual arrangements," and demanded to conduct its own negotiations with the mid-Atlantic region LNP vendor.[19] Thus, less than a month ago Bell Atlantic's chief worry was that it might be required to accept LNP administration on the same terms and conditions as all other carriers; while it now contends that the Commission must impose an additional layer of regulation to ensure that very outcome. While AT&T applauds BAN's decision to abandon its earlier claims that it may seek more favorable terms than other carriers for LNP database services, the Commission need not require that such services be offered pursuant to tariff, as the LLC structure will more efficiently achieve the same result BAN now purports to seek.

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19 Letter from Robert D. Lynd, Assistant General Counsel, Bell Atlantic - Maryland, to Daniel P. Gahagan, Executive Secretary, Public Service Commission of Maryland, May 20, 1997 at 2 (attached as Exhibit 3).

CONCLUSION

For the reasons given above and in its comments, AT&T urges the Commission to adopt the NANC's LNP recommendations without modification.

Respectfully submitted,

AT&T CORP.

By ____________________
Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.

Its Attorneys

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June 17, 1997

LIST OF COMMENTERS

Association for Local Telecommunications Services ("ALTS")

AT&T Corp. ("AT&T")

Bell Atlantic and NYNEX Telephone Companies ("BAN")

Cellular Telecommunications Industry Association ("CTIA")

Cincinnati Bell Telephone Company

The General Services Administration ("GSA")

The United States Telephone Association ("USTA")

WorldCom, Inc. ("WorldCom")

AT&T Exhibit 1

May 7, 1997

VIA FEDERAL EXPRESS

Daniel P. Gahagan
Executive Secretary
Public Service Commission
of Maryland
6 St. Paul Centre
Baltimore, MD 21202-6806

Dear Mr. Gahagan:

This is to advise the Commission of a serious problem that threatens the implementation of permanent local number portability ("LNP") in Maryland. Bell Atlantic Maryland ("BA-MD") advised the Maryland Local Number Portability Consortium on March 21, 1997 that it intends to negotiate its own agreement with the vendor[1] selected by MCAC to provide permanent number portability in the Mid-Atlantic region. MCAC is negotiating a Master Contract for the development, implementation and administration of an LNP database system. MCAC is also negotiating a User Agreement with competitively neutral terms and conditions under which each Number Portability Administration Center ("NPAC") customer will obtain service.

The result of a separate BA-MD negotiation would be to create a potentially discriminatory and non-neutral situation for all carriers that port numbers in Maryland. Such a development may violate the competitive neutrality mandate governing LNP costs set forth in Section 251(e)(2)of the Telecommunications Act of 1996. Certainly, such a development would create a significant barrier to the progress of all carriers in complying with the Commission's Order No. 72708 and the Federal Communication Commission's ("FCC's") LNP Order.[2]

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[1] The term "vendor" as used in this letter refers to the neutral third party that will provide permanent LNP database services in Maryland.

[2] In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286 (released July 2, 1996) ("LNP Order").

We therefore request that the Commission direct all carriers that port numbers in Maryland to use the terms, conditions and prices negotiated by MCAC with the selected vendor—whether or not the carrier is a member of MCAC. The issue is that all carriers must use a uniform agreement with the vendor for porting numbers to ensure competitive neutrality.

BA-MD has participated fully in the Request for Proposal ("RFP") drafting and evaluation process undertaken by MCAC. BA-MD representatives have learned first-hand what was proposed and what was responded to in the way of a Local Number Portability system and user agreement. BA-MD received copies of the RFP and the technical responses through its representatives to these committees. In fact, BA-MD has participated in every aspect of vendor selection except the actual negotiations. BA-MD was not included in the negotiations because it refused to join MCAC, the limited liability company that was formed to contract with the vendor.

Bell Atlantic is the only major LEC to refuse to join a regional LLC. In every other region of the country, the incumbent Regional Bell Operating Company has been a full participant in the respective LLC and has participated fully in the negotiating process with the vendor. The Mid-Atlantic region is the only exception. Bell Atlantic, through BA-MD, has been invited repeatedly to join MCAC, but has repeatedly refused. GTE, one of the major incumbent LECs in the United States, has joined not only MCAC, but four other regional LLCs around the nation. Similarly, other ILECs have joined their respective LLCs: Rochester Telephone Company (Northeast LLC) and Sprint Centel (Midwest LLC).

BA-MD was present when the Master Contract/User Agreement structure was described and discussed in the Maryland LNP Consortium Legal Committee meeting.[3] Similarly, this approach was discussed in several meetings of the full Maryland LNP Consortium. As detailed meeting minutes illustrate, BA-MD was present, participated in all of these discussions and offered no objections.[4]

Currently, LLCs in other Regions, with ILEC participation, are negotiating their respective Master Contracts and User Agreements with uniform terms, conditions and prices for all users. The Mid-West LLC has already negotiated and signed a Master Contract with Lockheed Martin IMS which included a User Agreement with identical terms, conditions and prices

[3] See attached minutes of April 2, 1996 Maryland LNP Consortium meeting and April 3, 1996 Maryland LNP Consortium Legal Committee meetings. BA-MD representatives attended and participated in both meetings.

[4] Id.

for all users, which competitors have signed, including Ameritech, AT&T, MCI, MFS WorldCom and others. There is no good reason why BA-MD cannot sign a User Agreement that contains identical terms, conditions and prices for all users of number portability in the Mid-Atlantic region. While all User Agreements are to be uniform, we also note that for practical reasons, each User Agreement may vary to accommodate engineering or technical modifications suiting particular network configurations, so long as no other utilizing carrier is placed at a competitive disadvantage. Accordingly, any attempt by BA-MD to oppose entering into a User Agreement because it lacks flexibility or fails to account for the circumstances of BA-MD's network features is simply inappropriate and cannot be justified.

BA-MD's plan to negotiate its own contract is in stark contrast to the FCC's mandate of competitive neutrality. The FCC's Order makes clear that the database vendor must be a competitively neutral third party.[5] The vendor cannot maintain its neutrality towards all users if it provides different treatment or prices to a particular carrier or class of carriers. Further, the terms of the MCAC Request for Proposal ("RFP") and the Master Contract provide that the vendor is precluded from negotiating different terms, conditions and prices with an individual party and from offering a competing service to carriers in the service area, in order to preserve competitive neutrality.

On April 15 and 23, 1997, the North American Numbering Council ("NANC") endorsed the activities undertaken by the seven regional LLCs concerning vendor selection and implementation, including the execution of a Master Contract between each LLC and its selected vendor and the execution of standard User Agreements between the vendor and each user of the vendor's services.[6] The Council has forwarded its recommendations to the FCC as required by the FCC's Local Number Portability Order. Although BA-MD may choose whether to join MCAC, nothing in the NANC recommendations endorse or legitimize BA-MD's stated plans to negotiate a separate, preferential agreement with the selected vendor for number portability in the Mid-Atlantic region. Such action will jeopardize the implementation of number portability in Maryland which, by Commission Order, is scheduled to begin by September 30, 1997.

Therefore, we ask the Commission to direct all Maryland carriers that port numbers to do so based on the standard User Agreement designed by industry representatives, a process in which BA-MD participated. Further, we

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[5] LNP Order at para. 92.

[6] "Report of the North American Numbering Council (Local Number Portability Administration Selection Working Group) to the Federal Communications Commission," Sections 4.4.9, 4.4.10, p. 14 (April 25, 1997).

ask that the Commission accord expedited treatment to this request because of the immediate impact efforts by BA-MD to negotiate its own User Agreement will have on MCAC's current contract negotiations and on implementation of permanent local number portability in Maryland.

Respectfully submitted,

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Maryland Local Number Portability Consortium
Minutes for the Thirteenth Meeting—Steering Committee
April 2, 1996

Attendees:

MD PSC	Geoff Waldau, Ron Alper
AT&T	Dan Cheatum, Ross Baker, Karlyn Stanley, Lisa Nichols
Andersen Consulting	Dave Niklaus
Bell Atlantic	Mary Vadas, Gary Sacra, Jo Gallagher, Dave Grimm, Bill Painter
Bellcore	N/A
Cable TV Assoc.	John Carswell
Cellular One	Keith Davis
Ericsson	N/A
GSA	N/A
ITN	N/A
JFS Telecom Consult.	John Shaw
Locust Tech.	N/A
MCI/MCI Metro	Wendy Traylor, Steve Addicks, Prince Jenkins
MDP Assoc.	N/A
MFS	Pamela Kenworthy (Conf Call)
Northern Telecom	N/A
Sprint	Ken Prohoniak, Cathy Thurston
Stratus Computer	N/A
TCG	Ed Gould
U.S. Intelco	N/A
*Outside Counsel	Carville Collins

<u>Draft Quarterly Report—PSC Staff</u>

Geoff Waldau of Staff passed out copies of the most recent draft of the Second Quarterly Report. He noted that issues lists from Sprint, Bell Atlantic, and TCG were included in the report. He said MFS won't file a response, he received a copy of AT&T's response after the draft report had been copied, and he was awaiting the MCI response. Sprint voiced concerns that some parties asked for extensions on the issues list response. Geoff then agreed to give everyone until Friday, 4/5, to get in their issues lists (and any party could modify their list if they wanted to add additional information—but no party was to comment on other parties' issues lists) and to provide comments on the Draft Quarterly Report.

The Consortium walked through the draft copy and provided comments to Geoff Waldau. He will send out a revised copy of the report to the Consortium on Monday, 4/8.

MCImetro brought up some issues concerning the Operator Services subteam (MCI chairs the team). Discussed the proposed Bellcore LIDB Service Provider ID—noted that it was 4/96 and vendors don't know about this change in LIDB. It was not realistic to think that vendors would have this change available by mid-1997. Steve Addicks said that if the capability were available it would be great, but it was not certain yet. Wendy Traylor said BA-MD indicated that a delay was not a big issue for them. Steve indicated he was concerned about BA-MD's position not to travel...he was trying to coordinate a valuable several-state meeting in a location other than Maryland to allow Operator Services SMEs to share information and be able to compare issues/alternatives. BA-MD again reiterated their position not to travel to meetings outside of Maryland for LNP—and would oppose vehemently any suggestion of

Commission forcing them to attend workshops in other states. Ken Prohaznik of Sprint noted that the FCC might have national workshops and rotate states and asked what BA would do in that situation-- BA stated that this was a different matter. Wendy Traylor of MCI questioned whether there was enough in the Quarterly Report that if the Commission ruled to move ahead quickly would this encourage BA to consider going to other states for meetings. Geoff Waldau encouraged MCI to put their concerns about BA's position on travel in their issues list response (item 5), stating the problem of the Operator Services non-attendance in other states.

LLC and NPAC Alternatives

Geoff Waldau of Staff provided Consortium members with a compiled/summarized view of alternatives put forth by members on LLC and NPAC Structure and Activities. Geoff advised that he intended to bring issues to a vote. He confirmed that BA-MD continued to choose to abstain in voting per their earlier letter sent to the Consortium.

Initial Membership in LLC -- Discussion around various alternatives for initial membership. There was debate as to the value to membership without voting capability. Sprint suggested, as in the case of an IXC, membership would be permitted and the IXC would pay for downloads but would not have the same voting rights as porting networks. MCI questioned value of nonvoting membership. Sprint said it guarantees access to downloads. AT&T prefers a contract for nonvoting parties instead of membership in the LLC. Sprint believed that something must be done to allow IXCs and nonporting networks access to downloads. MCI said that everyone buys from NPAC using the same contract with each party whether they are in the LLC or not...that way everyone is treated fairly.

Geoff held voting of two options--

(1) members (voting) of the LLC are networks that port numbers (certificated at state or federal level)

(2) all other networks

BA	abstain
AT&T	1
MCI	1
Sprint	1 & 2
MFS	1 & 2
TCG	1
Cellular	1

Decision is 1...that members (voting) of the LLC are networks that port numbers (certificated)

Sprint wanted to understand what happens with IXCs if they contract directly with the NPAC. MCI said that the NPAC would provide downloads to any service provider in Maryland and would charge them $X/month. Geoff noted that everyone buys off the same contract. Ron Alper emphasized that the LLC is supervising the activities of the NPAC--if they believe the vendor is acting improper, they'll pursue action. Whether a party is part of the LLC or contracting directly with the NPAC, each party pays the same amount, according to MCI. The Consortium agreed. Nondiscriminatory access to the NPAC is what Sprint wants....everyone has access and everyone has the same terms & conditions. Ron Alper noted that nondiscriminatory access to the NPAC terminology should get into the contracts. Carville Collins (outside counsel for Legal Committee) asked for clarification--the language he used was carriers who express an intent to port--this was okay with the Consortium.

New Membership in LLC -- Consortium agreed to treat all membership the same as new membership. It was noted that the LLC cannot compel anyone to become a member; but the Commission can make it a requirement for certification. Carville said we can reserve the right to change criteria.

Role of the PSC in LLC – Consortium agreed that Staff participation was appropriate. Carville said that at the last Steering Committee meeting, we agreed that a simple majority vote of managers will decide a vote. Any grieved party can take their concern to the Commission. BA was to draft wording to limit Commission involvement. Also noted that the LLC needed a chair to run the meetings—one way to accommodate this is to have the PSC representative serve as the Chairman (serves antitrust concerns, etc.). PSC would not have voting rights or super power, but would be involved in activities. Geoff took a vote of the parties...there were no objections (BA abstained).

NPAC Exclusivity – Staff suggested, The NPAC will be the one and only exclusive provider of permanent number porting administration center services in the State of Maryland. The NPAC will handle all NPAC needs of telecommunications service providers and any other entity in Maryland, either directly or indirectly for routing & billing of telecommunications. Access to the database shall be provided on a nondiscriminatory basis. Carville Collins to work in any changes to the wording. Geoff took a vote of parties...there were no objections (BA abstained).

NPAC Vendor Bids – alternatives discussed were:

(1) Fixed Price (3, 5 years)
(2) Based upon Transactions (3 levels of volume—high, med, low)
(3) Vendor Discrimination

Geoff took a vote of the parties...decision was 1&2 are mandatory, and 3 is optional, followed by negotiations.

NPAC Cost Recovery – Consortium agreed it must be competitively neutral. Three alternatives were discussed:

(1) Revenue in Maryland
(2) Portable Lines—portable lines should drive recovery method (and downloads at cost)
(3) Using 800 Services Tariff as Model—users pay for consumption/units of consumption basis

Example of (1):

MCI would pay \$30M x $\dfrac{\text{MCI \$ Revenue in MD}}{\text{Total \$ Revenue in MD}}$ (revenues generated originating in MD)

Example of (2)

MCI would pay \$30M x $\dfrac{\text{MCI NXX (10,000)}}{\text{All Portable NXXs (10,000)}}$ (exclusive NXXs of MCI's)

Example of (3)

Series of recurring and nonrecurring charges – see 800 Services Tariff write up

Geoff took a vote of the parties...Decision was to support Alternative 2 – Portable Lines

Alternative 2 – MCI, Sprint, TCG, Cellular
Alternative 3 – AT&T

Resale of NPAC Services – Alternatives were discussed—There was agreement that a carrier or agent should not be permitted to resell its download from the NPAC to others, except for the dip capability. Geoff took a vote of the parties...there was no objection (MFS & Cellular not present, BA abstained).

Payments to the NPAC – MCI suggested only carriers that have portable NXXs would pay—monthly bills would be based upon proration factor (portable NXX based). Firms with no portable NXXs will not have to pay. Other alternatives were suggested...annual or monthly payments. MCI noted under their proposal, carriers getting downloads would get contracted cost based rates for them. Geoff took a vote of the parties…there were no objections to the modified MCI proposal (MFS & Cellular not present, BA abstained).

Adding a New Jurisdiction – There was discussion of alternatives. Carville Collins said that corporate laws governing the LLC would allow adding/permitting other jurisdictions to become members…there is nothing legally prohibiting the expansion. However, Carville cautioned that there were clearly legal issues that would have to be resolved. He believed (and other parties) that more time was necessary to allow other state membership. He gave examples of the complexity of the issue:

. if involved in other states, may have questions of where to incorporate and what laws should govern the operating agreement
. could be tax issues at each state level
. regulatory issues per state-grievance procedure, as an example

Consortium agreed to defer this issue to legal.

Update on NPAC RFP

Ken Prohoniak of Sprint provided a status of the RFP process for the Consortium. He indicated that the RFP was not release on April 1. The RFP team will not issue the RFP until the LLC is in place. MCI asked where we stood if we could create the LLC in 72 hours. Carville said the MCAC, LLC Open Issues list created by the Legal Committee will be discussed by the Legal Committee on 4/3. Since the next Steering Committee meeting is 4/24, MCI suggested that the Legal Committee get the list with proposals to the Steering Committee as quickly as possible–everyone should be prepared to vote on the remaining open issues at that 4/24 meeting. Once these issues are resolved, the LLC can be formed, insurance can be sought, and the RFP can then be issued. Ken will redraft Section 1 of the RFP to incorporate the decisions made today. Geoff also said that Staff's Report will reflect decisions made today.

Ken advised that we need to put together a sample contract working with Legal and NPAC/SMS team. Steve Addicks of MCI noted that they tried to do this in Illinois without success. Ken said if we have to pull the sample contract, it will be removed.

MARYLAND LOCAL NUMBER PORTABILITY CONSORTIUM
LEGAL COMMITTEE
Minutes of April 3, 1996

Prepared by John Conwell

The Maryland Local Number Portability Legal Committee held a meeting on April 3, 1996 at AT&T's offices located at 1120 20th Street, N.W., Washington, D.C. The following persons attended:

Karlyn Stanley (AT&T)
Toby Gallup (AT&T) (by TeleConference)
Ron Alper (PSC) (by TeleConference)
Bob Lynd (BA-Md.)
Prince Jenkins (MCI)
Greg Nicholson (MCI)
Jodie Donovan-May (TCG)
Cathy Thurston (Sprint)
Ken Prohoniak (Sprint)
John Conwell (Cable Television Association of MD, DE & D.C.)
Carville Collins (Piper & Marbury)

1. REVIEW AND APPROVAL OF MINUTES OF PRIOR MEETINGS

On a motion by Karlyn Stanley, seconded by Prince Jenkins, the following Minutes were approved without modification:

???????? (Prior to March 8) Meeting
March 8, 1996 Meeting
March 15, 1996 Meeting

2. REQUEST FOR PROPOSAL/PROCUREMENT ISSUES

Ken Prohoniak, representing the RFP Committee, gave an overview of the draft RFP, and outlined the background of the goals contained in the RFP. He noted:

•The RFP is for competitive bids on the NPAC.

•A primary contract between the LLC (MCAC) and the bidder, who may use subcontractors.

•Process includes pre-qualification of potential bidders on issues of financial resolve, ability, suitable, technical ability, neutrality standard.

Toby Gallup queried whether the Consortium, or the entity, would be subject to any state or federal bidding rules. Karlyn Stanley informed him that none applied. Ron Alper noted that this was a private contract, not a state issued Request for Proposal.

Toby Gallup inquired about the relative value of the contract from the perspective of the bidder. Ken Prohoniak noted that the value would be based on the PSC cost benefit analysis, and the it appeared to have a $30 Million over a life of 3-5 years. This number comes from the draft of the Second Quarterly Report to the Commission of the LNP Consortium. This number relies on a "Pass Zero" analysis.

Karlyn Stanley broached the question of contracting with the vendor. Toby Gallup asked about the interaction between the carriers and the prime contractor. Ken Prohoniak noted that the interaction with the vendor would occur primarily between the MCAC and the prime contractor. Toby Gallup noted that it appears to be a fine line between the prime vendor and the sub-contractors. Greg Nicholson noted that a turn key solution appeared to be the goal of the RFP. The LLC should administer the contractor and keep track of the vendor. A lot of criteria should be set forth for the prime contractor, with no criteria for the sub-contractor.

The question of intellectual property ("I.P.") arose by discussing the development of software. Various views were expressed concerning the ownership of the I.P., including concerns of tax liability from LLC ownership. Strategic negotiation concerns were also noted that the ownership and licensing of the I.P. could be a negotiating point with the prime contractor.

A discussion of the operations of the LLC ensued, and a diagram was prepared for illustration. Some underlying assumptions include that only one contract would be issued from the LLC to the prime vendor and the prime vendor would sign individual (although identical) contracts to local exchange carriers. Greg Nicholson noted that a model contract should be included with the RFP, reflecting at least two price options, and should address trade mark, I.P. and other pricing issues. It was also noted that an entity which downloaded the information only would only pay cost of the service.

A question arose as to whether to give the RFP and model contract to potential bidders at the pre-qualifying stage or before. Ken Prohoniak believed that circulating the RFP after pre-qualification has occurred. Greg Nicholson noted that typically the RFP and related information is given to potential bidders prior to pre-qualification, but that it is not necessary. A letter may be sent outlining the qualifications required and the basic task. Toby Gallup suggested including a few points on business terms in the pre-qualification. He offered to work on the drafting of the pre-qualification business terms to be included.

Karlyn Stanley noted the need to update the bidding procedure to reflect the changes.

Carville Collins further explained some of the underlying premises to the operation of the LLC with respect to the bidding process. He noted that the members of the LLC are the local exchange carriers. Only two relationships exist between the LLC and the vendors: contract and I.P. rights. Money for the vendor would flow from the carriers as legal entities, and not from, or through, the LLC. Some funds, though, would be necessary for the existence and administration of the LLC and would come from the members directly.

Bob Lynd noted that the consideration for giving ownership of the I.P. to the LLC is the opportunity to contract with the carriers for providing true local number portability. Presently, the option is open to the LLC to claim ownership of the I.P. The conversation turned to the desirability to own the I.P. Karlyn Stanley noted that the I.P. could be left to the vendor in order to allow the vendor to market the solution nation wide, but retain licensing rights for the LLC. Greg Nicholson noted that the LLC could claim ownership, and grant a broad license back to the vendor to accomplish the same goal. Carville Collins noted that a review of the Maryland tax laws indicated that ownership of the I.P. would subject the LLC to state tax. Ken Probonlak suggested preparing a list of the options for the Steering Committee, including LLC ownership, for their decision.

The conversation turned to the question of the contract between the vendor and the carriers, and whether such agreement included language obligating the carrier to pay the vendor directly. Toby Gallup suggested including a boilerplate contract for the vendor to use for dealing with the carriers in the master contract between the LLC and the vendor, or in the alternative, allow the vendor to construct deal-by-deal arrangements with the carriers. Discussion incurred, and the Committed reached consensus that the master contract (between the LLC and the vendor) would include a boilerplate service contract for use by the vendor in contracting with the carriers. The master contract would contain additional service and quality issues such as testing, etc.

With respect to pricing, Ken Probonlak noted that the Consortium had previously agreed that if a carrier dropped out of the LLC, then the costs of administration should be reallocated and spread equally among the remaining carriers.

The following items are to be provided to the steering committee: Carville Collins' diagram, options on I.P. (a. vendor own all rights, b. LLC own all rights, c. LLC all rights with license to vendor, d. vendor sole owner with LLC exclusive rights), draft of LLC Operating Agreement with the Master and Service contracts. Laurel Gillis and Greg Nicholson are to work on the questions surrounding I.P. The draft of the Master and service contracts should be prepared for the Steering Committee by April 17, 1996.

Some discussion involving nomenclature ensued. The Prime Vendor is the Number Portability Administration Center (NPAC)/Administrator. The NPAC/Administrator is the entity responsible for staffing the center 24 hours a day, 7 days a week, receives the uploads from the carriers, is responsible for the downloads, responsible for billing and collection, and the management and staff people. The Prime Vendor is responsible for all NPAC functions, but may sub contract out hardware, software, or other functions. The SMS is the Service Management System.

Deliverables:

Laurel Gillis is responsible for the I.P. information April 17, 1996
Carville Collins open issues on Operating Agreement by Friday or Monday
Cathy Thurston " " " " " " "
Prince Jenkins " " " " " " "
Karlyn Stanley will update the bidding document, procedural outline
Toby Gallup work on RFP
Greg Nicholson work on RFP

3. Chinese Wall Agreement

Ken Prohoniak asked if the agreements should carry an effective date. It was agreed that the date of signing the agreement should be the effective date. The signed documents are being kept by Maryland Public Service Commission Staff member Geoff Waldau.

Jodie Donovan asked about the agreement for TCG Consortium member Ed Gould. The agreement obligates TCG to monitor the Chinese Wall signers, and protects all information involved in Case 8704.

4. Proprietary Information - Procedure for Handling

Bob Lynd suggested a procedure for each company to deal with the proprietary information received in the course of this matter. A cover letter indicating that the enclosed material is proprietary, with the recipient signing the cover letter was suggested. Jodie Donovan suggested that this may be an issue for the entire steering committee. After some discussion, it was determined that a boilerplate cover on each exchange of proprietary information would be drafted, and the person distributing the material should be responsible for keeping track of who received the information. Bob Lynd undertook to draft a cover letter and send the product to Geoff Waldau.

5. Dispute Resolution for Internal Conflicts

The discussion began with a review of the Steering Committee action regarding a tie vote in the LLC. Bob Lynd described his draft to resolve internal disputes. Carville Collins noted that it seemed compatible with prior discussions on internal dispute resolution mechanism. He noted that the draft does not address external dispute resolution procedures. Two additions were initially made: the addition of "Internal" to the header, and adding "by the managers" to "in accord with procedures to be agreed upon" so that it reads "in accord with procedures to be agreed upon by the managers".

Karlyn Stanley focused attention on the first part of the procedure and asked if an action may be appealed to the PSC by only one member? The answer is yes, from this draft. This may hamstring the operations of the LLC. The concern is that any member may turn to the PSC anyway to resolve disputes, so language in the Agreement to limit that option should be included. It was also pointed out that, on the face of it, the Commission could not issue an injunctive order but that a party may be able to ask permission to seek a temporary restraining order pending outcome by the PSC.

Prince Jenkins noted that incorporating the language on an injunction may be useful. Ron Alper noted that the PSC would rather have the parties resolve disputes. This would allow parties to work out and negotiate a satisfactory outcome.

Karlyn Stanley noted that the voting procedure on the contract with the prime vendor was to be by a majority of uninterested parties. The concern that this may contravene the selection of the Prime Vendor was noted, to which Bob Lynd added that this problem existed anyway.

With respect to the jurisdiction of the PSC over the LLC, the comment was offered that the entity itself does not meet the definition of a telephone company. The Commission does have jurisdiction over each member company.

This problem went unresolved at this meeting, and was scheduled as the first subject for discussion at the next meeting of the legal committee.

6. Next Meeting

The next meeting was scheduled for April 5, 1996, 2:00 p.m., and will be a teleconference meeting. The following meeting for April 26, 1996, was scheduled for 2:00 p.m. at the A.T.& T. office in Washington, D.C.

AT&T Exhibit 2

Mid-Atlantic Carrier Acquisition Company

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May 27, 1997

FILED
MAY 27 1997
PUBLIC SERVICE COM'N
OF MARYLAND

VIA HAND DELIVERY

Mr. Daniel P. Gahagan
Executive Secretary
Public Service Commission of Maryland
6 St. Paul Centre, 16th Floor
William Donald Schaefer Tower
Baltimore, Maryland 21202-6806

Re: Case No. 8704
Permanent Local Number Portability

Dear Mr. Gahagan:

The Mid-Atlantic Carrier Acquisition Company ("MCAC") hereby replies to the Commission's request for further information regarding the legal issues and problems created if, under certain circumstances described below, Bell Atlantic ("BA") were to negotiate jointly with MCAC for a Master Contract to obtain local number portability ("LNP") database services. Those circumstances, made clear at the Commission's May 21 Administrative Meeting, are: (1) BA does not seek to be a party to the Master Contract, (2) BA does not indicate any interest in becoming a member of MCAC, and (3) BA requests to join the negotiations, now nearly completed between MCAC and a vendor of LNP database services, on the standard User Agreement, a component of the Master Contract.

BA's request, if granted, would raise legal issues and problems that would create undue risks for MCAC members, effectively eliminate any prospect of timely LNP deployment, and potentially suspend LNP deployment in the mid-Atlantic region. Although MCAC has not previously raised the issue of BA's membership in MCAC, in light of the legal issues and problems arising from BA's request, MCAC now hereby requests that the Commission strongly encourage, and if necessary order, BA membership in MCAC. This request concurs with Staff's repeated recommendations that BA join MCAC.[1] As described below, BA membership would

[1] See, Staff's Second Quarterly Report of the Maryland LNP Consortium, pp. 42-43; Third Quarterly Report of the Maryland LNP Consortium, pp. 9-12; and Recommendations to the Commission dated May 13, 1997.